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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,615	12/22/2003	Mark S. Garrison	SC39Q-US	7572

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AVON PRODUCTS, INC.
AVON PLACE
SUFFERN, NY 10901

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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02/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/743,615

Applicant(s)

GARRISON, MARK S.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 7, 9-11, 18, 23-25, 27-29, 31, 33-35, 37, 38, 40 and 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 7, 9-11, 18, 23-25, 27-29, 31, 33-35, 37, 38, 40, 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of amendment filed on November 13, 2007. Claim rejection made under 35 U.S.C. § 103 (a) as indicated in the previous Office action dated is modified to address the claim amendment.

Claims 2-7, 9-11, 18, 23-25, 27-29, 31, 33-35, 37, 38, 40, and 41 are pending. It is noted that claims 3-6 were inadvertently omitted in the summary of Office action and the rejection statement in the Office action. Correction has been made in this Office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-7, 9-11, 18, 23-25, 27-29, 31, 33-35, 37, 38, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bara et al. (US 6224851 B1) in view of Occupational Safety & Health Administration data (Chemical Sampling Information: Ethyl Perfluorobutyl Ether), Bratescu (US.6528070 B1).

Claim 38 is directed to an oil and water emulsion comprising a volatile compound having a vapor pressure about 20-500 mbar at 25 °C and a boiling point about 45-110 °C, wherein the volatile compound does not totally dissolve in water or oil, and wherein the composition has a viscosity from about 5,000 cps to about 1,500,000 cps. Claim also recites that the composition has "textured surface appearance" which is "disturbed after each use of the composition provided the disturbed composition is maintained for a pre-determined period of time in the sealed container".

Bara teaches making cosmetic compositions with perfluoromethylcyclopentane. See Bara, Claim 3. Oil-in-water emulsion is also taught in col. 6, lines 11-25; instant claim 2. The reference teaches, "the perfluoromethylcyclopentane can advantageously be replaced with an equivalent amount of ethoxynonafluorobutane", which is ethoxy perfluorobutane, another name for ethyl perfluorobutyl ether, commercially available as HFE 7200 by Novec. See col. 3, lines 21-26; instant claims 18, 33, 39. The weight of the volatile components in the composition is disclosed in col. 8, lines 48-51. See instant claims 27-29, 31 and 34-35.

The reference teaches that the fluorinated solvents disclosed therein have vapor pressure that is greater than 20 mbar at 25 °C and boiling points between 20-75 °C, thus the reference suggests that perfluoromethylcyclopentane and ethoxy- and methoxynonafluorobutane are within this limitation. See col. 2, lines 8 – 14; col. 3, lines 14 – 18; instant claim 18. The reference is silent as to the specific vapor pressure of the volatile perfluoro solvents.

OSHA data teaches that ethyl perfluorobutyl ether has vapor pressure of 109 mmHg (145.32 mbar) at 25 °C. See instant claim 23.

Bara does not teach the specific viscosity of the composition. Since the emulsions are "preferably in the form of creams", a skilled artisan would have been motivated to formulate the invention in the viscosity range of conventional cream composition well known in the art.

Bratescu teaches that the viscosity of cosmetic emulsion composition can vary from thin as 100 cps, to cream like consistency of 80,000 cps. See col. 13, lines 33-35.

See instant claims 2-7, 32, 38, 40, 41. Thus formulating the Bara composition in the viscosity range as taught by Bratescu would have been obvious to the skilled artisan.

It is obvious that the resulting properties of the compositions made according to the prior art will vary depending on the factors such as the constituents of the continuous and discontinuous phases and their amount. It is obvious that the alleged "self-renewing property" of the composition would have been observed by a routineer making a composition according to the teachings of the prior art.

Response to Arguments

Applicant's arguments filed on November 1, 2007 have been fully considered but they are not persuasive in part and moot in view of the new grounds of rejection in part.

Applicants assert that Example 2 of Bara is the closest prior art and does not result in a self-renewing composition. The present claim now limits the weight amount of the perfluoro oil to 0.1-10 % by weight and the formulation of the emulsion to oil in water. Examiner does not find that the claimed self-renewing property of a composition confers patentability to the present composition when the claimed composition is a product made according to the teachings of a prior art. As indicated in the rejection above, the reference teaches making both O/W and W/O emulsions, and the amount of the perfluorobutyl ether as claimed is also within the range as taught by the reference.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605.

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The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu
Patent Examiner